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No.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1987

UNITED MINE WORKERS OF AMERICA 1974 BENEFIT PLAN AND TRUST,

Petitioner

v.

DISTRICT 29, UNITED MINE WORKERS OF AMERICA; HERSCHEL HENSON

UNITED MINE WORKERS OF AMERICA 1974 BENEFIT PLAN AND TRUST,

Petitioner

v.

DISTRICT 29, UNITED MINE WORKERS OF AMERICA; LOCAL UNION 5821; LOCAL UNION 6046, UNITED MINE WORKERS OF AMERICA; GARLAND WALKUP, RETIREE; MADELINE R. THOMAS, WIDOW; JOSEPH M. HANSHEW, DISABLED RETIREE; JOHN DOE; MARY DOE

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

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QUESTIONS PRESENTED

1. Whether the United States Court of Appeals' decision to disregard a collectively bargained eligibility rule of an employee benefit plan, which the court acknowledged as denying eligibility to certain individuals, and to substitute a rule devised by the court to render those individuals eligible for benefits, contravenes national labor policy and conflicts with the Court's decision in *United Mine Workers of America Health and Retirement Funds v. Robinson*, 455 U.S. 562 (1982).

2. Whether the court's decision to enjoin the plan's fiduciaries from enforcing the terms of the plan document is contrary to Sections 402 and 404 of the Employee Retirement Income Security Act of 1974, conflicts with decisions of other Circuits, and threatens the continuation of benefits for more than 4,500 eligible beneficiaries.

PARTIES TO THE PROCEEDINGS IN THE COURT OF APPEALS

The parties to the consolidated appeals are named in the caption of this petition, except for the Trustees of the United Mine Workers of America 1974 Benefit Plan and Trust. They are Joseph P. Connors, Sr., Donald E. Pierce, Jr., William Miller, William B. Jordan, and Paul R. Dean.

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

The United Mine Workers of America 1974 Benefit Plan and Trust ("1974 Benefit Plan" or "Plan") respectfully petitions for a writ of certiorari to the United States Court of Appeals for the Fourth Circuit to review the judgment entered by that Court on August 13, 1987 in two consolidated appeals, *District 29, United Mine Workers of America and Herschel Henson v. United Mine Workers of America 1974 Benefit Plan and Trust*, No. 86-3709(L), and *District 29, United Mine Workers of America, et al. v. United Mine Workers of America 1974 Benefit Plan and Trust*, No. 87-3018 (4th Cir., August 13, 1987), *petition for rehearing denied* (October 16, 1987).

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Fourth Circuit, reported at 826 F.2d 280, appears at A. 1a.[1] The judgment of the United States District Court for the Southern District of West Virginia from which appeal was taken in No. 87-3018, and the District Court's memorandum opinion, reported at 8 Empl. Ben. Cas. (BNA) 1556 (S.D. W.Va. 1987), appear at A. 9a and 11a, respectively. The judgment of the United States District Court for the Southern District of West Virginia granting a preliminary injunction from which appeal was taken in No. 86-3709(L), and the District Court's unreported memorandum opinion, appear at A. 30a and 32a, respectively. The order of the Court of Appeals denying the petition for rehearing and suggestion for rehearing *en banc* appears at A. 40a. The opinion of the United States Court of Appeals for the Fourth Circuit in a related case, *District 29, United Mine Workers of America v. Royal Coal Company*, 768 F.2d 588 (4th Cir. 1985), appears at A. 42a.

JURISDICTION

The judgment of the Court of Appeals was entered on August 13, 1987. A. 1a. The petition for rehearing and suggestion for rehearing *en banc* were denied on October 16, 1987. A. 40a. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

STATUTES INVOLVED

This case involves section 8(d) of the National Labor Relations Act ("NLRA"), 29 U.S.C. § 158(d), and sections

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[1] The appendix to the Petition is bound in a separate volume, and references to it are denoted "A. ____." References to the three volume joint appendix filed in the Court of Appeals in No. 87-3018 are denoted "____J.A. ____." References to the one volume joint appendix filed in No. 86-3709(L) are denoted "86-3709(L) J.A. ____."

402 and 404 of the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. §§ 1102 and 1104. These statutory provisions are set forth at A. 102a.

STATEMENT OF THE CASE

Statement of Proceedings

On March 8, 1985, District 29, United Mine Workers of America ("UMWA" or "Union"), Local Unions 5821 and 6046, UMWA, and a number of individual plaintiffs filed a complaint against Royal Coal Company ("Royal") and the 1974 Benefit Plan alleging that one or both of them is required to provide health benefits to the individual plaintiffs, who are pensioners or the dependents of pensioners who last worked for Royal. Federal jurisdiction was founded on section 301 of the Labor Management Relations Act, 1947 ("LMRA), 29 U.S.C. § 185, and section 502 of ERISA, 29 U.S.C. § 1132. A. 20a.

On March 12, 1985 and April 2, 1985, the District Court issued a temporary restraining order and a preliminary injunction against Royal requiring it to provide health benefits to the individual plaintiffs on the grounds that the expired National Bituminous Coal Wage Agreement of 1981 ("1981 Wage Agreement") required Royal to provide lifetime health benefits to its pensioners. I J.A. 31.

Royal appealed from this order, and the United States Court of Appeals for the Fourth Circuit vacated the preliminary injunction, deciding that under the terms of the 1981 Wage Agreement, Royal's obligation to provide health benefits existed only for the life of that Agreement. *District 29 v. Royal Coal Company*, 768 F.2d 588 (4th Cir. 1985); A. 42a. The Court remanded the matter with instructions to determine the damages suffered by Royal under the preliminary injunction and to decide whether the 1974 Benefit Plan is responsible for continued health benefits under a provision of the Plan that requires it to pay benefits to pensioners only when their "last signatory employer" is "no longer in business." *Id.* at 592; A. 49a.

On August 13, 1985, the District Court issued a preliminary injunction against the 1974 Benefit Plan, deciding that each pensioner's "right to lifetime health benefits vest[s] upon his retirement" and that the 1974 Benefit Plan is required to provide those benefits whenever the pensioner's last employer "is no longer able or required to provide such benefits . . .". I J.A. 39, 47, 50.

The 1974 Benefit Plan thereafter moved for summary judgment on the merits. Without acting on that motion, the District Court conducted an evidentiary hearing. On January 5, 1987, the District Court entered a Judgment Order and a Memorandum Opinion granting a permanent injunction against the 1974 Benefit Plan requiring it to provide health benefits to the individual plaintiffs and others similarly situated. A. 9a, 11a. The 1974 Benefit Plan appealed from that judgment in No. 87-3018.

On April 10, 1986, District 29, two local unions, and an individual pensioner filed with the same District Judge a complaint and an application for a temporary restraining order against Manlo Mining Company ("Manlo"), the 1974 Benefit Plan, and other defendants. Federal jurisdiction was founded on section 301 of the LMRA, 29 U.S.C. § 185, and section 502 of ERISA, 29 U.S.C. § 1132. A. 34a. The *Manlo* action sought a preliminary injunction against the defendants requiring one of them to provide the individual pensioner with health benefits. On July 11, 1986, the District Court issued a preliminary injunction in *Manlo* against the 1974 Benefit Plan, and the Plan appealed in No. 86-3709(L).

The Fourth Circuit consolidated the appeals for argument and decision. On August 13, 1987, the Fourth Circuit issued a judgment and opinion affirming the District Court in both cases. A. 1a. The 1974 Benefit Plan moved for rehearing and suggested rehearing *en banc*. The motion and suggestion were denied by order dated October 16, 1987. A. 40a.

Statement of Facts

Petitioner 1974 Benefit Plan is a collectively bargained, multiemployer welfare benefit plan providing health benefits

to a limited class of pensioners and their dependents who receive pensions from the United Mine Workers of America 1974 Pension Plan. The 1974 Benefit Plan was originally established by the National Bituminous Coal Wage Agreement ("Wage Agreement") of 1974, an agreement governing the terms and conditions of employment in most of the unionized sector of the nation's bituminous coal industry. A. 13a, 33a.

As originally established, the 1974 Benefit Plan covered all active bituminous coal miners represented by the International Union, UMWA. It also covered all miners who retired and qualified for a pension under the parallel UMWA 1974 Pension Plan. The plan of benefits and the trust instrument were agreed upon in collective bargaining between the Union and the Bituminous Coal Operators' Association, Inc. (the "BCOA"), a multiemployer bargaining agent for coal producers. These negotiated plan documents were expressly incorporated by reference and made a part of the 1974 Wage Agreement, to which the BCOA's members and hundreds of independent employers subscribed. A. 15a. Benefits under the Plan were paid out of a single trust, to which each signatory operator paid contributions. I J.A. 65.

During the term of the 1974 Wage Agreement, the benefit payments out of the trust exceeded the contractually-fixed contributions made by the coal operators. As a result, the Trustees of the Plan were forced to reduce the level of benefits. By the end of the Agreement the Plan was completely insolvent, and all benefit payments were terminated. A. 16a; I J.A. 114, 121, 141, 149.

Negotiations for a new Wage Agreement began in late 1977 and continued through a strike that lasted 111 days. I J.A. 115, 153. A principal issue that divided the Union and the BCOA was the mechanism for providing health benefits for active and retired miners. The BCOA insisted that the 1974 Benefit Plan be abolished, and with it the collective responsibility for funding health care. In its place, the BCOA proposed that each company establish its own plan to provide benefits for its employees and its pensioners. The Union

resisted this proposal, and insisted that a single multi-employer plan, with the advantage of spreading the costs of health care over the entire industry, be retained. A. 16a; I J.A. 193–94, 303–04.

After a two-month deadlock, the parties reached a tentative agreement abolishing the 1974 Benefit Plan and establishing individual employer plans. This agreement was rejected by the Union's Bargaining Council. A. 16a; I J.A. 157–58, 302–06. The negotiators then reached a compromise. The Union accepted the BCOA demand that each company establish its own health plan. In exchange, the BCOA agreed to retain a limited 1974 Benefit Plan for the purpose of providing benefits to the pensioners of companies who went out of business during the term of the new Wage Agreement. In addition, the BCOA agreed to a "guaranty clause" under which the operators agreed to finance all promised benefits under the pension and health plans during the term of the Wage Agreement, even if the negotiated contributions proved insufficient to pay the promised benefits. This compromise won acceptance from the Union membership and became the 1978 Wage Agreement. A. 16a, 71a; I J.A. 119-20; II J.A. 99.

Under this newly-negotiated agreement, health benefit coverage under the 1974 Benefit Plan was limited to a class of pensioners whose signatory employers, and any successors thereto, became "no longer in business" during the term of the 1978 Wage Agreement. The plan document also specified that the period of eligibility for benefits for this class expired upon the termination of the 1978 Wage Agreement in 1981. A. 50a; II J.A. 43. The term "no longer in business" was not defined in the Plan document. Therefore, the Trustees of the 1974 Benefit Plan adopted an administrative interpretation of the term, and decided that an employer was "no longer in business" if it ceased to receive income from coal operations and left no "successor or assign" in its stead. A. 18a; I J.A. 126-27, 195; III J.A. 269.

The Trustees' definition of "no longer in business" generated controversy between the collective bargaining parties.

In the BCOA's view, the Trustees' definition was overly broad and permitted companies to "dump" liabilities on the Plan by manipulating corporate structures. The BCOA therefore sought an amendment to the Plan explicitly defining "no longer in business" in order to prevent abuses it perceived under the Trustees' definition. At the same time, the Union sought to expand coverage under the 1974 Benefit Plan to include certain active miners on layoff who lost benefits when their employers became "no longer in business." A. 17a.

Ultimately, after mid-contract negotiations in 1980 and full contract negotiations for a new Wage Agreement in 1981, the Union and the BCOA agreed to the Union's demand to include laid off miners in the class of beneficiaries eligible for 1974 Benefit Plan benefits when an employer became "no longer in business." At the same time, the parties arrived at their own explicit definition of "no longer in business," which they incorporated into both the 1981 Wage Agreement and the Plan document. A. 17a; I J.A. 164, 205-07; III J.A. 270. Under that definition, a coal company would be deemed "no longer in business" only if it ceased to receive income from the production or sale of coal, ceased employing persons covered under the Wage Agreement, and was "financially unable" to provide health benefits to its active and retired employees. "Financially unable" to provide benefits was explicitly defined to include both the company that ceased operations and the company's "successors or assigns, if any, or any other related division, subsidiary or parent corporation, regardless of whether covered by this Wage Agreement or not . . . ." A. 74a. The parties again agreed, through express language in the amended Plan document, that eligibility for benefits would terminate at the expiration of the 1981 Wage Agreement in 1984. A. 50a.

The Trustees consistently applied this new negotiated definition to cases that arose during the forty-month term of the 1981 Wage Agreement. The Union became dissatisfied with the results. In the negotiations leading to the 1984 Wage Agreement, the Union therefore proposed substantial changes to both the separate employer-sponsored plans and to the 1974 Benefit Plan. With respect to the employer plans, the

Union proposed an extensive amendment specifying that pensioners' health benefits were to be considered "vested," and that each employer was responsible for providing benefits to its pensioners, regardless of whether the employer became a party to future Wage Agreements or not. A. 100a-02a; I J.A. 168-69, 197-98, 240, 243; III J.A. 163. The Union also insisted that the 1974 Benefit Plan be amended to provide benefits to any pensioners whose last employer was either no longer in business or had no legal obligation to provide benefits. A. 100a-02a; I J.A. 166-67.

The Union pressed these demands until the final day of bargaining, and the BCOA opposed them, contending that the Union's proposed extensions were inconsistent with prior agreements limiting the scope of health benefits. I J.A. 170-72. Ultimately, the Union abandoned its proposals, and no substantive changes were made to the employer plans or the 1974 Benefit Plan. Thus, under the Plan document as amended in the 1984 Wage Agreement, eligibility for benefits continued to be limited to the class of pensioners and laid off miners whose employers met the negotiated definition of "no longer in business," and the duration of benefits for this class was limited to the term of the new Agreement. A. 53a-54a, 56a, 87a; I J.A. 199; II J.A. 121.

The appeals consolidated below involve the Trustees' application of the Plan's "no longer in business" provisions in two similar situations. In No. 86-3709(L), Herschel Henson, the individual plaintiff, retired from Manlo Mining Company. Manlo's parent corporation, Gopher Mining Company ("Gopher") assumed responsibility for providing health benefits to Henson. A. 33a. Neither Manlo nor Gopher signed the 1984 Wage Agreement. A. 33a. In June 1985, Gopher terminated Henson's benefits. 86-3709(L) J.A. 64, 70. Gopher is the wholly-owned subsidiary of S.J. Groves Co., a large construction company. 86-3709(L) J.A. 199. Nevertheless, the District Court granted a preliminary injunction, requiring the 1974 Benefit Plan to provide Henson with health benefits. A. 30a-31a.

In No. 87-3018, several individual pensioners, on behalf of themselves and a group of approximately 70 pensioners

who had last worked for Royal Coal Company, brought an action against Royal and the 1974 Benefit Plan seeking health benefits. In the first phase of this case, the pensioners sought a preliminary injunction requiring Royal to continue to provide them with health benefits, even though Royal's 1981 Wage Agreement had expired and it did not become signatory to the successor Wage Agreement. The pensioners relied on the 1981 Wage Agreement's "General Description of the Health and Retirement Benefits" provided under the Agreement. The General Description provided that a miner who qualified for a pension "will be entitled to retain his Health Services card for life . . .," and that upon his death, his widow will continue to receive health benefits "until her death or remarriage . . . ." A. 81a. The District Court reasoned that this language constituted a promise by each individual signatory to the 1981 Wage Agreement to provide lifetime health benefits to its own group of pensioners and that this obligation survived the expiration of the Wage Agreement. The District Court concluded that the pensioners had demonstrated a probability of success on the merits and enjoined Royal to resume the payment of health benefits. A. 44a; I J. A. 36-37.

Royal appealed, and a panel of the Fourth Circuit reversed. *District 29 v. Royal Coal Co.*, 768 F.2d 588 (4th Cir. 1985); A. 42a. The panel considered a provision of the 1981 Wage Agreement that required employers to guarantee the payment of benefits, but only "during the term of the Agreement . . . ." In the panel's view, this express limitation demonstrated that, as a matter of law, no benefit obligation extended beyond the expiration date of the Wage Agreement. A. 48a-49a. The panel found further support for this conclusion in testimony received by the District Court from negotiators for both the Union and the BCOA, who agreed that " . . . all rights and benefits under the collective bargaining agreements were open for negotiation every three years." A. 48a (citation omitted). The panel therefore vacated the injunction against Royal and remanded the matter for a determination of whether the 1974 Benefit Plan was responsible for benefits under the Plan's "no longer in business" eligibility standard. A. 49a.

Upon remand, the District Court found that Royal was the subsidiary of another corporation and that this corporation "is financially able to provide benefits to Royal's pensioners . . ." within the meaning of the Plan document. A. 20a. Notwithstanding these findings, and notwithstanding the Plan's express limitation of benefits to situations where the coal company and its parent corporation are "financially unable" to provide benefits, the District Court granted a permanent injunction against the 1974 Benefit Plan. It based this ruling on its appraisal of testimony concerning bargaining history, admitted over the Plan's objection, and its conclusion that the bargaining parties' true intention, despite their written agreements memorialized in the Plan document, was to make the 1974 Benefit Plan responsible whenever the employer "is no longer able *or required* to provide such benefits." A. 27a-28a (emphasis added).

A panel of the Fourth Circuit agreed with the District Court that ". . . it was the intention of the [collective bargaining] parties to provide lifetime benefits . . . ." A. 6a. The panel recognized, however, that it was bound by the Court's earlier decision that " . . . neither the former employer nor its corporate successor is legally liable for providing these health benefits." A. 6a. The panel likewise recognized that the bargaining parties formulated a " . . . patent limitation of the liability of the 1974 Benefit Plan and Trust to provide health benefits only 'during the terms of this agreement,' and only where the individual employer is 'no longer in business,'. . . ." A. 5a. Moreover, on the undisputed facts found by the District Court, the panel conceded that " . . . the literal provisions triggering the liability of the 1974 Benefit Plan . . . are not satisfied." A. 5a.

Nevertheless, the panel decided that ". . . we will not permit the 1974 Benefit Plan and Trust to escape liability by its strict adherence to the literal terms in the agreement." A. 6a-7a. Instead, the panel decided to reject the bargained-for "patent limitation" on the Plan's liability and impose on it an unrestricted obligation to provide benefits whenever a signatory employer itself ceases to have a legal obligation to provide benefits. A.7a.

REASONS FOR GRANTING THE PETITION

I. THE COURT OF APPEALS' DECISION TO INVALIDATE THE EXPLICIT TERMS OF A COLLECTIVELY BARGAINED WELFARE BENEFIT PLAN IS A SERIOUS AND UNWARRANTED INTERFERENCE WITH THE COLLECTIVE BARGAINING PROCESS. AS SUCH, IT IS IN CONFLICT WITH APPLICABLE DECISIONS OF THIS COURT AND OF OTHER COURTS OF APPEALS.

These consolidated appeals presented a single question to the Court of Appeals—whether the individual applicants for benefits have satisfied the collectively bargained rules governing eligibility for benefits from the 1974 Benefit Plan. A panel of the court affirmatively concluded that they have not. Nevertheless, the panel enjoined the Plan to disregard the explicit terms of the governing agreement embodied in the Plan document in order to reach a result that, in the panel's view, is more in keeping with the bargaining parties' generalized intent. The panel reached this result notwithstanding a history of explicit bargaining, over the course of three successive Wage Agreements, that culminated in the rejection of proposals designed to effectuate the very result desired by the panel. The panel's decision to disregard the parties' agreement and to substitute its own view of what the parties intended is in fundamental conflict with national labor policy. The decision therefore warrants review by this Court.

Section 8(d) of the NLRA defines collective bargaining as

> . . . the performance of the mutual obligation of the employer and the representative of the employees to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment . . . but such obligation does not compel either party to agree to a proposal or require the making of a concession . . . .

29 U.S.C. § 158(d); A. 102a.

Accordingly, the Supreme Court has long recognized that the policy of the national labor laws is to promote

collective bargaining, "free of any Government compulsion to agree to a [particular] proposal, or even reach an agreement. . . ." *Carbon Fuel Co. v. United Mine Workers of America*, 444 U.S. 212, 219 (1979). In line with that policy, the Court has consistently rejected attempts by the National Labor Relations Board and other governmental bodies to substitute their judgment concerning the desirability of substantive provisions of labor agreements for that of the collective bargaining parties. *E.g., NLRB v. American Nat. Ins. Co.*, 343 U.S. 395, 404 (1952); *Local 24 of I.B. of T., etc. v. Oliver*, 358 U.S. 283, 295-96 (1959). Instead, the Court has recognized that "[w]ithin the area in which collective bargaining was required, Congress was not concerned with the substantive terms upon which the parties agreed." *Local 24 of I.B. of T., etc. v. Oliver*, 358 U.S. at 295. Indeed,

> . . . it was recognized from the beginning that agreement might in some cases be impossible, and it was never intended that the Government would in such cases step in, become a party to the negotiations and impose its own views of a desirable settlement.

H.K. Porter Co. v. NLRB, 397 U.S. 99, 103 (1970).

The Court has made it abundantly clear that this policy of noninterference in the substantive terms of a collective bargaining agreement is fully applicable to an employee benefit plan embodied in such an agreement. *United Mine Workers of America Health and Retirement Funds v. Robinson*, 455 U.S. 562 (1982). In *Robinson*, a unanimous Court reversed a decision of the District of Columbia Circuit holding that the terms of the collectively bargained UMWA 1950 Benefit Plan and Trust are subject to judicial review for reasonableness. *Robinson v. UMWA Health and Retirement Funds*, 640 F.2d 416 (D.C. Cir. 1981). In the Court's words, ". . . when neither the collective bargaining process nor its end product violates any command of Congress, a federal court has no authority to modify the substantive terms of a collective-bargained contract." 455 U.S. at 576 (footnote omitted). And, where the terms of a collectively bargained

employee benefit plan ". . . do not violate federal law or policy, they are entitled to the same respect as any other provision in a collective-bargaining agreement." *Id.* at 575. *Accord, District 2, UMWA v. Helen Mining Co.*, 762 F.2d 1155 (3d Cir.), *cert. denied*, 474 U.S. 1006 (1985); *Norman v. United Mine Workers of America Health and Retirement Funds*, 755 F.2d 509 (6th Cir. 1985); *Short v. United Mine Workers of America 1950 Pension Trust*, 728 F.2d 528 (D.C. Cir. 1984); *see Moore v. Reynolds Metals Co. Retirement Plan*, 740 F.2d 454, 456 (6th Cir. 1984), *cert. denied*, 469 U.S. 1109 (1985) (courts may not review for reasonableness the terms of a noncollectively-bargained benefit plan established by the employer).

The Court of Appeals ignored these decisions and decided to substitute its own definition of eligibility for that adopted by the parties. It did so because, in the panel's view, "[i]t is likely that the parties in negotiating . . . simply did not consider . . ." the consequences of the definition for which they bargained. A. 7a. The panel's decision to rectify the flaws it perceived in the parties' agreement was reached in the face of a ten-year history of bargaining over the rule in question.

In 1977, the Union and the BCOA began a prolonged negotiation, accompanied by a strike, over the mechanisms for providing health care for retired miners. After the failure of a tentative agreement, the parties agreed to a structure in which individual employer plans would be primarily responsible for providing benefits to active and retired miners. The 1974 Benefit Plan was retained to cover a limited group of pensioners whose employers went out of business and discontinued health coverage. A. 50a; I J.A. 160, 211-12. However, in reaching agreement on this overall structure, the parties left the phrase "no longer in business," a critical term in the 1974 Benefit Plan, undefined. The Trustees of the Plan therefore adopted a definition of the term and applied it uniformly during the term of the 1978 Wage Agreement. A.18a; *District 17 v. Allied Corporation*, 765 F.2d 412, 416 (4th Cir.) (*en banc*), *cert. denied*, 473 U.S. 905 (1985).

The BCOA became concerned that the Trustees' definition was susceptible to manipulation by some companies, and therefore proposed in midcontract negotiations in 1980 and in full negotiations in 1981 that a more restrictive definition be adopted by the parties. The Union agreed. In exchange, the Union bargained for and obtained an amendment to the Plan extending coverage to laid off employees whose employers became "no longer in business" as defined by the parties. A. 17a.

During the course of the 1981 Agreement, the Union became dissatisfied with the operation of the agreed definition. Accordingly, in the negotiations for the 1984 Wage Agreement, the Union proposed extensive modifications to the health benefit provisions of the contract. Under the Union's proposal, each employer would acknowledge that its pensioners were vested in lifetime health benefits and that the employer's obligation survived the expiration of the new contract. A. 100a. The Union further proposed that the 1974 Benefit Plan be amended to require the Plan to provide benefits whenever an employer became "no longer in business" or whenever a pensioner "has no express statutory or case-law defined right of recovery with a reasonable prospect of recovery from" his employer and its affiliates. A. 101a. Finally, the Union proposed that the Trustees of the Plan be required to "reconsider all 'out of business' determinations made pursuant to the NBCWA of 1981 under the criteria established herein." A. 101a.

The Union advanced these proposals throughout, and the BCOA rejected them throughout. I J.A. 168–69. Finally, on the last day of bargaining the Union withdrew the proposals and the parties reached agreement. I J.A. 199. As a result, the "literal terms" of the 1974 Benefit Plan and its "no longer in business" definition were readopted without change by the Union and the BCOA. A. 53a-56a, 87a-88a.

It is readily apparent that the Court of Appeals' refusal to enforce these terms represents nothing more than its own dissatisfaction with the outcome of the parties' negotiations.

This dissatisfaction led the court to modify the parties' agreement, and by doing so, the court has

> violate[d] the fundamental premise on which the [National Labor Relations] Act is based—private bargaining under governmental supervision of the procedure alone, without any official compulsion over the actual terms of the contract.

H.K. Porter Co. v. NLRB, 397 U.S. at 108.

The consequences of this action are significant. In the negotiations over the 1978 Wage Agreement, the parties were uncertain of the level of contributions needed to fund the restructured 1974 Benefit Plan. They agreed to a contribution rate of two cents per hour. By the end of the 1978 Agreement, the parties realized that the Plan had accumulated a substantial surplus in excess of the needs of the approximately 1,800 pensioners, and a like number of dependents, who qualified for benefits. Therefore, in the 1981 Wage Agreement, and again in the 1984 Wage Agreement, the parties agreed that no contributions to the Plan would be required. A. 19a, 76a, 89a. At the same time, they agreed to extend the period of eligibility for those pensioners who had qualified under the previous contracts. A. 50a-51a, 53a-54a.

At present, the 1974 Benefit Plan covers more than 4,500 retired miners, their spouses, and their dependents under the express terms of the Plan. The decisions of the District Court and the Court of Appeals have spawned more than 22 additional lawsuits, and numerous additional threats of suit, involving more than 6,000 pensioners and their dependents.[2]

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[2] For example, since the decision below, the 1974 Benefit Plan has been notified that the coal mining affiliates of the LTV Corporation, currently operating under the protection of Chapter XI of the Bankruptcy Code, will not sign a new Wage Agreement covering their more than 2,500 pensioners and dependents upon the expiration of the 1984 Wage Agreement on January 31, 1988. Additionally, an estimated 1,413 pensioners and their dependents are currently receiving benefits under preliminary injunctions issued by the United States District Court for the Southern District of West Virginia in the wake of the decisions for which review is sought.

If the courts follow the rule announced by the Court of Appeals, the Plan's assets will be exhausted before the end of 1989. Thus, the more than 4,500 beneficiaries will be left without the health care that was explicitly bargained for and promised in the national coal wage agreements.

Of course, the bargaining parties may agree to resume contributions to the Plan. However, they are not compelled to do so. Indeed, because the question of contributions to the Plan involves benefits for non-bargaining unit members, it may be viewed as a nonmandatory subject of bargaining that either party may simply refuse to discuss. *See Allied Chemical and Alkali Workers of America v. Pittsburgh Plate Glass Co.*, 404 U.S. 157, 180-82 (1971); *NLRB v. Wooster Div. of Borg-Warner Corp.*, 356 U.S. 342, 349 (1958). Thus, there can be no assurance that the Union and the BCOA will agree to pay the costs of the Court of Appeals' decision to disregard the plain terms of their prior agreements.

Whether or not the parties agree to continue this benefit coverage, their bargaining over future benefits will be profoundly affected by the Court of Appeals' decision to reallocate the fruits of their past agreements. In the future, any written agreement over benefits that the parties achieve will be made in the face of uncertainty over whether the courts will enforce it in accordance with its terms. That uncertainty can only adversely affect the future course of labor relations in the coal industry. Indeed, the Court of Appeals' decision could generate similar uncertainty in all bargaining relationships nationwide.

II. THE COURT OF APPEALS' DECISION TO PROHIBIT THE TRUSTEES FROM APPLYING THE EXPRESS TERMS OF THE PLAN DOCUMENT VIOLATES SECTIONS 402 AND 404(a)(1)(D) OF ERISA, AND CONFLICTS WITH DECISIONS OF OTHER COURTS OF APPEALS.

The Court of Appeals decided to enjoin the Trustees of the 1974 Benefit Plan from applying the "literal terms" of the Plan. This, the court announced, ". . . can only further the

purposes for which the trust fund was created." This remarkable conclusion conflicts with the express requirements of two distinct provisions of ERISA and with decisions of other Courts of Appeals. As such, the decision presents an important question of federal law which has not been, but should be, reviewed by the Court.

Section 402 of ERISA provides in relevant part that:

> (a)(1) Every employee benefit plan shall be established and maintained pursuant to a written instrument.
>
> * * *
>
> (b) Every employee benefit plan shall—
>
> * * *
>
> (4) specify the basis on which payments are made to and from the plan.

29 U.S.C. § 1102(a)(1) and (b)(4).

These requirements amplify and strengthen similar directives that pre-date ERISA. *See* section 302(c)(5)(B) of the Labor-Management Relations Act, 1947 ("LMRA"), 29 U.S.C. § 186(c)(5)(B), and section 401 of the Internal Revenue Code of 1954 ("Code"), 26 U.S.C. § 401, as interpreted in Treas. Reg. § 1.401-1(a)(2)(1956).[3]

The importance of the written instrument requirement is made plain by ERISA's fiduciary duty section:

> Subject to section 403(c) and (d), 4042 and 4044, *a fiduciary shall discharge his duties* with respect to a plan solely in the interest of the participants and beneficiaries and—
>
> * * *

[3] Congress' concern in this regard was particularly great for collectively bargained employee benefit plans. One of the purposes of enacting the "written agreement" requirement in section 302(c)(5)(B) of the LMRA, 29 U.S.C. § 186(c)(5)(B), was to correct abuses of welfare funds "controlled by union leaders under such loose standards that they are free to give or withhold benefits at their pleasure." 93 Cong. Rec. A-2252 (1947) (remarks of Senator Ball). *See Arroyo v. United States*, 359 U.S. 419, 425-26 (1959); *Robinson*, 455 U.S. at 570-73.

> (D) *in accordance with the documents and instruments governing the plan* insofar as such documents and instruments are consistent with the provisions of this title or title IV.

ERISA section 404(a)(1)(D); 29 U.S.C. § 1104(a)(1)(D) (emphasis added).

The Court has recognized that section 404's enumeration of fiduciary duties is a codification of well-established traditional trust law principles. *NLRB v. Amax Coal Co.*, 453 U.S. 322, 329-34 (1981); *Central States, Southeast and Southwest Areas Pension Fund v. Central Transport, Inc.*, 472 U.S. 559, 570 n.10 (1985). Thus, Section 402's requirement of a written instrument specifying the basis on which payments are to be made, and section 404's corresponding fiduciary duty to administer the plan in accordance with its governing documents, are simply restatements of fundamental principles. Indeed, as the Fourth Circuit itself has recognized,

> There is no firmer principle in the common law of trusts than that requiring the trustees to act only in accordance with the terms of the trust.

Sinai Hospital v. National Benefit Fund for Hospital & Health Care Employees, 697 F.2d 562, 566 (4th Cir. 1982).

It is readily apparent that one of the functions of these related requirements is to allow plan fiduciaries to fulfill their ". . . duty of determining who is in fact a plan participant." *Central Transport, Inc.*, 472 U.S. at 572 (footnote omitted). It is equally apparent that in performing this duty, the trustees are constrained to abide by the written directives adopted by the settlors of the trust specifying the persons entitled to benefits. G. BOGERT & G. BOGERT, *Law of Trusts and Trustees*, § 814, page 315 & n.7 (2d rev. ed. 1980) ("A trustee is under an absolute duty to distribute the trust property according to the terms of the trust, and is liable for any improper distribution, no matter what his good faith was.")

The Court of Appeals ignored these fundamental dictates of ERISA, the LMRA, and trust law, and announced that it would not permit ". . . strict adherence to the literal terms in the agreement." A. 6a-7a. Instead, speculating that in writing the document, the parties "simply did not consider" that the "patent limitation" of liability would in fact exclude some pensioners from benefits under the 1974 Benefit Plan, the panel decided to reformulate the document to accord with the panel's own notion of what the parties should have written.

The panel's approach eliminates ERISA's written instrument requirement as a governing principle applicable to employee benefit plans. Further, it nullifies any effective enforcement of a fiduciary's obligation to administer a plan in accordance with its written terms. Under the panel's decision, it is apparent that a plan fiduciary who has a plausible basis to believe that an explicit plan provision is contrary to the settlors' "true intent" is free to disregard his written instructions and grant or deny benefits consistent with his own appraisal of what was intended, but not written. There can be no doubt that, in enacting the specific requirements of ERISA, Congress intended otherwise.

Several Courts of Appeals have recognized as much. For example, in *Cummings by Techmeier v. Briggs & Stratton Retirement Plan*, 797 F.2d 383 (7th Cir.), *cert. denied*, 107 S.Ct. 648 (1986), the Seventh Circuit reviewed a lower court decision imposing a constructive trust on pension plan assets in favor of a deceased plan participant's potential beneficiary. The decedent had contracted to name his minor daughter as the beneficiary of death benefits under his pension plan. He failed to do so before his death. The plan document plainly required the submission of a written designation to the plan fiduciary as a condition to the payment of benefits. The lower court reasoned that under the "unusual circumstances" of the case, the plan fiduciaries should be compelled to pay the benefit to the intended beneficiary, notwithstanding the plain terms of the plan. *Id.* at 388.

The Court of Appeals reversed, relying on section 402(a)(1) and 404(a)(1)(D) of ERISA. *Id.* at 387. In the court's words,

"[t]he defendants had clearly complied with both the written terms of the Plan and their fiduciary duties. That should have ended the matter." *Id.* at 388. The court went on to explain the policy considerations underlying ERISA's written instrument requirement:

> The funding for the Briggs & Stratton Plan, like any pension plan's funding, depends on stability and predictability. Sound administration of a pension plan demands advance planning. Forcing trustees of a plan to pay benefits which are not part of the written terms of the program disrupts the actuarial balance of the Plan and potentially jeopardizes the pension rights of others legitimately entitled to receive them. As the Eighth Circuit has emphasized in *Phillips v. Kennedy*, 542 F.2d 52, 55 n.8 (8th Cir. 1976), there is danger when courts tamper with the written terms of a pension plan . . . .

Id. at 389 (quotation from *Phillips v. Kennedy* omitted).

The Eleventh Circuit agrees. In *Nachwalter v. Christie*, 805 F.2d 956 (11th Cir. 1986), the court affirmed a ruling that a purported oral modification of a written plan provision is invalid.

> ERISA expressly requires that employee benefit plans be "established and maintained pursuant to a written instrument." 29 U.S.C. § 1102(a)(1). We agree with the district court that this requirement that ERISA plans be "maintained" in writing precludes oral modifications of the Plans. . . .

Id. at 960

Like the Seventh Circuit, the court in *Nachwalter* recognized that ERISA's written instrument requirement is fundamental to the scheme of the statute.

> A central policy goal of ERISA . . . would be undermined if we permitted oral modifications of ERISA plans because employees would be unable to rely on these plans if their expected retirement

> benefits could be radically affected by funds dispersed to the employees pursuant to oral agreements.

Id. at 960; *see Pompano v. Michael Schiavone & Sons, Inc.*, 680 F.2d 911, 914 (2d Cir.), *cert. denied*, 459 U.S. 1039 (1982).

The Ninth Circuit reached a similar conclusion under the LMRA.

> [a] tacit understanding between [the employer] and the union that conflicts with or alters the meaning of the written agreement should not be considered. . . . A contrary rule would invite "collusion and controversy to the detriment of the employee beneficiaries."

Northwest Administrators, Inc. v. B.V. & B.R., Inc., 813 F.2d 223, 226-27 (9th Cir. 1987) (citations omitted). *See also District 2, UMWA v. Helen Mining Co.*, 762 F.2d 1155, 1160 (3d Cir. 1985) (court should not interfere ". . . when the trustees have . . . literally followed an unambiguous benefit eligibility requirement that was bargained for and . . . set forth in an employee benefit plan . . .")

The Fourth Circuit overlooked this substantial authority and expressly decided to depart from the plain terms of the Plan document. By doing so, the Court undermines "[a] central policy goal of ERISA . . .". *Nachwalter v. Christie*, 805 F.2d at 960. Indeed, its decision threatens the "actuarial balance" of this Plan and all others, and "potentially jeopardizes the . . . rights of [those] legitimately entitled to receive [benefits]." *Cummings by Techmeier*, 797 F.2d at 389.

CONCLUSION

The petition for a writ of certiorari should be granted.

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